

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

LARRY L. KOGER,

Plaintiff,

v.

CIVIL ACTION NO. 1:08-0909

NORFOLK SOUTHERN RAILWAY
COMPANY,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant's motion in limine to exclude the physical limitations assigned to plaintiff by Dr. Robert Kropac. (Doc. # 91). At the final settlement conference on November 16, 2009, the parties agreed that a Daubert hearing on the motion was unnecessary. The court believes that defendant's objections to the proffered testimony go to its weight rather than its admissibility and may be properly explored through cross examination. Accordingly, the motion is DENIED.

Also pending before the court are defendant's Fed. R. Evid. 602 objections to portions of the videotaped deposition of Dr. Kropac. The court OVERRULES the objections.

Plaintiff also proffered a document to the court outlining his objections to Dr. Kropac's videotaped deposition. Plaintiff seeks the exclusion of the following excerpt: Page 47, line 8 through Page 48, line 4 and Page 48, line 8 through 10. The portions of Dr. Kropac's deposition from Page 47, line 17 through Page 48, line 4, and Page 48, lines 8 through 10 are excluded

based on the court's Memorandum Opinion and Order granting plaintiff's motion in limine to preclude any evidence based on plaintiff's alleged alcohol or Xanax abuse. The parties are directed to delete the objectionable testimony from the videotaped deposition.

As to plaintiff's Rule 402 objection regarding the testimony concerning a prior back injury, the court will defer ruling until it hears from defendant on the issue.*

The Clerk is directed to send copies of this Memorandum Opinion and Order to all counsel of record.

IT IS SO ORDERED this 16th day of November, 2009.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge

* By Memorandum Opinion and Order entered November 13, 2009, the court denied plaintiff's motion in limine to exclude this evidence. However, plaintiff's current objection is based on Federal Rule of Evidence 402, which was not addressed in the court's prior order.